NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUAN GAYTAN-MARISCAL; et al., Petitioners, v. ALBERTO R. GONZALES, Attorney General, Respondent.	No. 05-74876 Agency Nos. A76-862-003 A76-862-002 A72-403-506 A72-403-507 MEMORANDUM [*]

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006 [**]

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Husband and wife Juan Gaytan-Mariscal and Ofelia Hernandez-Martin, and their daughters Mayra Leticia Gaytan-Hernandez and Erika Fabiola Gaytan-Hernandez, natives and citizens of Mexico, petition for review of the Board of

[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

[**] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Immigration Appeals' ("BIA") order denying their motion to reopen removal proceedings. We review for abuse of discretion the denial of a motion to reopen. *See Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We dismiss in part and deny in part the petition for review.

To the extent the evidence presented with petitioners' motion to reopen concerned the same basic hardship grounds as their application for cancellation of removal, we lack jurisdiction to review the BIA's determination that the evidence was insufficient to establish a prima facie case of hardship. *See Fernandez v. Gonzales*, 439 F.3d 592, 601-03 (9th Cir. 2006) (holding that if "the BIA determines that a motion to reopen proceedings in which there has already been an unreviewable discretionary determination concerning a statutory prerequisite to relief does not make out a prima facie case for that relief," 8 U.S.C. § 1252(a)(2)(B)(I) bars this court from revisiting the merits).

Petitioners' contention that the BIA violated their due process rights by disregarding their new evidence of hardship is not supported by the record and does not amount to a colorable constitutional claim. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005) ("[t]raditional abuse of discretion challenges recast as alleged due process violations do not constitute colorable constitutional claims that would invoke our jurisdiction.").

To the extent the motion to reopen contained evidence of an entirely new basis for hardship, *see Fernandez*, 439 F.3d at 602, the BIA did not abuse its discretion by denying the motion to reopen, because the BIA considered the evidence and acted within its broad discretion in determining that the evidence was insufficient to warrant reopening, *see Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002) (The BIA's denial of a motion to reopen shall be reversed only if it is "arbitrary, irrational or contrary to law.").

PETITION FOR REVIEW DISMISSED in part; DENIED in part.